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NO. 52304-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BELLEVUE JOHN DOES 1-11, FEDERAL WAY JOHN DOES 1-5 AND
JANE DOES 1-2, and SEATTLE JOHN DOES 1-13 and JOHN DOE,

FILED
2004 MAY 29 PM 5:01

Appellants,

v.

BELLEVUE SCHOOL DISTRICT #405, a municipal corporation and a
subdivision of the State of Washington; FEDERAL WAY SCHOOL
DISTRICT #210, a municipal corporation and a subdivision of the State
of Washington; and SEATTLE SCHOOL DISTRICT #1, a municipal
corporation and a subdivision of the State of Washington,

Respondents,

and

THE SEATTLE TIMES COMPANY,

Respondents/Cross-Appellants

REPLY BRIEF OF APPELLANT-SEATTLE JOHN DOE #9

STEVE PAUL MOEN. WSB#1143
SHAFER, MOEN & BRYAN, P.S.
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REPLY BRIEF OF APPELLANT-SEATTLE JOHN DOE #9

Appellant-Seattle John Doe #9's Points in Reply to Respondent-Seattle Times.

1. Washington case law has not dealt with the specific problem presented in these appeals.

The unique factor in these appeals relates to the claim of appellant/cross-respondent The Seattle Times ("The Times") that, somehow, the name of the teacher who was subject to a sexual misconduct investigation in the past is a vital component of the required disclosure; and that Washington case law has established that point. However, the cases cited by The Times do not so clearly establish that point in the context of the highly sensitive issue of alleged sexual misconduct. Brouillet v. Cowels Publishing Co., 114 Wn. 2d 788, 791 P. 2d 526 (1990) did not deal with any dispute as to the teachers' names in affirming the disclosure requirements of records of teacher sexual misconduct. Cowels Publishing Co. v. State Patrol, 109 Wn. 2d 712, 784 P. 2d 597 (1988) was involved with the well-known problem of on the job misconduct by police officers, e.g. excessive force; whereas sexual misconduct by teachers does not necessarily involve classroom conduct. Columbian Publishing Co. v. City of Vancouver, 36 Wn. App. 25, 671 P. 2d 280 (1983) dealt with claimed privacy rights of police officers who had complained about their

chief with knowledge that their complaints would be read by the others. Tacoma Public Library v. Woessner, 90 Wn. App. 205, 951 P. 2d 357 (1998) discussed the protection of employees from disclosure of "identifying information" (presumably social security number, residential address and the like) in public scrutiny of salaries and benefits paid to public employees. None of these cases dealt with the sensitive issue of sexual abuse allegations and the unlimited scope of information sought by The Times in this case.

2. The Times' own journalistic practices belie its suggestion that the public interest cannot be served without disclosure of the teachers' names.

The three remaining teacher appellants all recognize the legitimate public concern about sexual misconduct by teachers toward students. The Times, however, has yet to suggest why it cannot write a story about the school districts' handling of these matters without disclosure of the teachers' names. Its suggestion that the employee's name is essential to the story is inconsistent with the demonstrated behavior of The Times, which subscribes to the Society of Professional Journalists' Code of Ethics (copy attached as Appendix A.). That code has a section entitled "Minimizing Harm", which states that "Journalists should...[b]e cautious about identifying juvenile suspects or victims of sex crimes [and] [b]e judicious

about naming criminal suspects before the formal filing of charges."

Three recent examples of The Times' effective reporting of such major news stories are attached as Appendix B:

- The murder of an Auburn attorney and arrest/release of an (unnamed) suspect
- The burning of a cross at a pastor's home by two (unnamed) juveniles
- A (unnamed) woman's civil action for rape by an (unnamed) University of Washington football player

The public's obvious interest in these three stories was adequately served without naming person's whose privacy The Times chose to respect under the circumstances. While neither the legislature nor the courts should be telling newspapers how to write a story, it is disingenuous of The Times to claim that it can't do its job if the names of the teachers in these appeals are redacted.

DATED: May 28, 2004.

Respectfully submitted,

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Code of Ethics

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Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story
- Never plagiarize.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography,

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- sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views they find repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- Show good taste. Avoid pandering to lurid curiosity.
- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- Avoid conflicts of interest, real or perceived.
- Remain free of associations and activities that may compromise integrity or damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.

- Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media.
- Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others.

The SPJ Code of Ethics is voluntarily embraced by thousands of writers, editors and other news professionals. The present version of the code was adopted by the 1996 SPJ National Convention, after months of study and debate among the Society's members.

Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984, 1987 and 1996.

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The Seattle Times

Friday, April 16, 2004, 12:00 a.m. Pacific

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Divorce was apparently in the air on fateful day

By J. Patrick Coolican
Seattle Times staff reporter

A man arrested in Monday's slaying of Auburn attorney William Messer went to see the bankruptcy lawyer that afternoon with his estranged wife to talk about financial arrangements of their pending divorce, according to a source close to the investigation who asked not to be identified. A judge in Auburn yesterday set bail at \$1 million for the 42-year-old Auburn resident, who police say returned alone to Messer's office later Monday night and beat him to death. The man, who has not been charged, was held at the city jail in Auburn.

Police found the body of Messer, 57, after Messer's fiancée asked them to check on him late Monday night. They arrested the suspect Wednesday.

Police say that Messer and the suspect got into an argument during the meeting, though they have not said what the dispute was about. The suspect's estranged wife has not been arrested or implicated.

Police have said that Messer and the suspect did not know each other outside the lawyer-client setting.

The suspect's public defender yesterday asked for his bail to be set at \$500,000, saying he is a longtime Auburn resident and a business owner.

The Seattle Times generally does not name criminal suspects until they are formally charged.

Court records show that he has no criminal record. But other records show his marriage had fallen apart recently. He and his wife filed for divorce in Lincoln County last month.

The suspect filed for a protection order against his wife last month, accusing her of being verbally abusive, destroying family photos and driving off while his arm was inside her car. The order was temporarily granted until a court date in May.

The man's Auburn neighbors yesterday said they were surprised at his arrest. "We were absolutely shocked," said Patti Turner, who lives across the street.

Another neighbor, Sara Jones, said the man and his wife moved into the neighborhood in January. The suspect built Jones' mailbox for her, she said.

APPENDIX B-1

"He was a sweet guy," Jones said. "He said he was getting a divorce and times were hard, but he was a nice guy."

J. Patrick Coolican: 206-464-3315 or jcoolican@seattletimes.com. Reporter Christine Clarridge contributed.

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APPENDIX B-2

The Seattle Times

Tuesday, April 20, 2004, 12:00 a.m. Pacific

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No charges in slaying; Auburn man released

By Christine Clarridge
Seattle Times staff reporter

King County prosecutors cited a lack of evidence yesterday in ordering the release of an Auburn man held as a suspect in the beating death of an Auburn attorney last week.

Prosecutors said they would not be filing charges against him, for now.

"We need more time to investigate," said Dan Donohoe, a spokesman for the King County Prosecuting Attorney's Office. The law allows a suspect to be held for only 72 hours before charges are filed, "and we need more time before we make a decision," he said.

King County Deputy Prosecutor Tim Bradshaw said the investigation is continuing.

"All I will say is that it's important to follow the evidence wherever it leads you, and that is what we are doing and will continue to do," Bradshaw said.

The body of William Messer, 57, was found in his office last Monday night after Messer's fiancée asked police to check on him.

Police arrested the suspect, a 42-year-old Auburn man who reportedly left Messer's office angry after he and his estranged wife had a meeting with Messer over divorce issues.

Messer was reportedly last seen alive around 6:15 p.m. by his last appointment of the day.

Police originally suspected that the Auburn man returned that evening and killed Messer.

However, a number of people who attended a 12-step recovery meeting with the Auburn man at 7 p.m. on Monday said they would testify that the man arrived at the meeting on time and that his demeanor was normal.

In addition, law-enforcement sources said investigators couldn't find any blood evidence connecting the suspect and the crime scene.

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APPENDIX B-3

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APPENDIX B-4

The Seattle Times

Saturday, April 17, 2004, 12:00 a.m. Pacific

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2 teens sentenced in cross-burning at pastor's home

By Christopher Schwarzen

Times Snohomish County bureau

EVERETT — For a brief time yesterday, the courtroom at the Denney Juvenile Justice Center became an impromptu classroom.

The subject: the history of hate crimes against blacks in the United States. The pupils: two Arlington teens who burned a cross outside the home of an African-American pastor.

"These boys might not know this, but from the (post-Civil War) Reconstruction Period to 1968 there were 3,445 lynchings of African Americans," said Prosecuting Attorney Dave Kurtz. He noted that lynchings were often preceded by burning a cross.

"(Cross-burnings) can bring terror, be a precursor to violence, or spawn filthy nonsense," Kurtz said.

When the lesson was over, the 16-year-old boys offered tearful apologies for their March 24 act outside the Arlington home of Pastor Jason Martin.

Judge Gerald Knight then sentenced each of the cousins to 30 days in detention, 72 hours of community service and ordered each to pay \$100 to the state's victim's fund.

Knight also suggested the boys research racism, cross-burnings and the civil-rights movement as part of their probation, and perhaps write a paper on what they've learned.

With credit for the time they've already served in Denney Youth Center and good behavior, the boys are expected to be released Tuesday. Their community service, which most likely will consist of removing graffiti, will take place during the next nine months.

"They want to get on with it, get on with their life," said the father of one of the boys, who agreed with the idea of writing a history paper. "They certainly learned they screwed up, but I don't think they understand all this history."

The Seattle Times usually doesn't name defendants charged as juveniles.

The teens, who were charged as minors, told police they placed a large cross on the lawn of Martin's home in the upscale Arlington neighborhood of Gleneagle and lit it on fire because of a dispute with

APPENDIX B-5

Martin's 17-year-old son, court papers read. Martin's son attends Arlington High School, and the two teens are recent dropouts from the school.

The teens told police they did not consider the act racist but just a prank. They also admitted to driving a pickup over the Martins' lawn about a week earlier.

The boys turned themselves in to police three days after the cross-burning.

Martin, who sat in the courtroom yesterday with his wife and one of his sons, made a brief statement, expressing forgiveness for their actions.

"I only hope you guys learned something from this," Martin told the two teens. "And I hope I'll be able to help you guys further in your walk of life."

But Martin also asked Judge Knight to impose the strictest sentence possible against the boys. Instead, Knight gave both teens a stern warning.

"You better hope that nobody commits further crimes of hate against the Martin family," Knight said. "You very well could be held responsible for their actions."

Since the cross-burning, there have been events in Arlington to promote racial harmony. Martin, pastor of Jesus is Lord Life Tabernacle in Marysville, has met with officials, including Gov. Gary Locke, to promote cultural programs as a way to end racism.

The boys' attorneys said the teens plan to earn their GEDs and attend community college. Both defense attorneys asked that the boys' records be cleared of the felony charge after a successful probation period.

But Knight denied the request.

"I don't think people of noncolor can have any idea of the impact (of a cross-burning) on an African American," Knight said. "Hate against a race may be forgiven, but it cannot be forgotten or tolerated in a civilized society."

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APPENDIX B-6

The Seattle Times

Wednesday, September 17, 2003, 12:00 a.m. Pacific

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Woman's suit accuses former UW football player of rape

By Christine Clarridge

Seattle Times staff reporter

A former University of Washington football player has been accused of raping a young woman after a party at a fraternity house.

The suit alleges that the 21-year-old former Husky, who flunked out of school last year, walked the incapacitated 18-year-old to her apartment after she drank alcohol at the party, and then raped her.

The lawsuit, filed in King County Superior Court, also names the fraternities that hosted the party — Beta Theta Pi and Sigma Chi — and the UW. The party was May 30, 2002, at the Beta house.

It's the second such lawsuit filed in recent months by an alleged rape victim against a Husky player, the Sigma Chi fraternity and the UW.

The 21-year-old could not be reached for comment yesterday. An attorney who represented him when the allegations surfaced, Michael Hunsinger, said he has denied raping the woman.

The Seattle Times is not identifying the man because he has not been charged with a crime and was not a prominent member of the football team. Also, the newspaper generally does not identify people who may have been sexually assaulted.

The allegations were investigated by the Seattle Police Department and turned over to the county Prosecutor's Office, which declined to file a rape charge against the man, citing a lack of evidence.

Three months ago, a lawyer for the woman, Becky Roe, filed a similar lawsuit on behalf of another woman against former Husky player Jerramy Stevens, now a tight end for the Seattle Seahawks, in an alleged rape at a Sigma Chi party three years ago. King County prosecutors declined to file a rape charge against Stevens, saying there was insufficient evidence.

Attorneys for the accuser in the newer case said the man had taken advantage of the incapacitated woman and that the fraternities were at fault for serving alcohol to minors and not regulating the party. The university fostered a climate that encourages football players to think they can get away with anything, the suit alleges.

"They've fostered an atmosphere that's dangerous to female students," said Kathy Goater, another

APPENDIX B-7

lawyer for the accuser. Roe said the university has failed to exercise the substantial power and control it has over players brought in on scholarship.

"They need to make a more concerted effort to educate these players about what sexual assault really is," Roe said. " 'No' doesn't mean 'go,' and getting someone so drunk they don't know what's going on does not make it OK, and not everybody wants to have sex with a football player."

At a news conference yesterday, Roe and Goater said the burden of proof in a criminal case is much higher than in a civil case. In a criminal case, prosecutors must show beyond a reasonable doubt that a crime occurred, whereas in a civil matter, an accuser must show an offense more likely happened than did not happen.

In addition to monetary compensation for psychological and emotional damage, Roe said the alleged victims in the two cases are seeking changes in how the university treats football players and regulates fraternities.

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APPENDIX B-8